Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Ackerman	Analyst:	Roger Lackey	Bill Number:	SB 324
Related Bills:	None	Telephone:	845-3627	Introduced Date:	February 20, 2001
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Mergers and Acquisitions

SUMMARY

This bill would streamline certain corporate mergers by eliminating the redundant requirement that Franchise Tax Board (FTB) certify that the franchise and income tax obligations of a disappearing entity have been satisfied. Existing law requires a surviving corporation to assume the tax liabilities, including preparing and filing tax and information returns, of a disappearing corporation.

PURPOSE OF THE BILL

This bill is sponsored by FTB to reduce the administrative complexity of merger transactions and eliminate delays in completing such transactions.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2002, and apply to all Certificates of Mergers issued by the SOS after that date.

POSITION

Support.

At its December 18, 2000, meeting, the FTB voted 2-0 to sponsor the language introduced in this legislation.

ANALYSIS

FEDERAL/STATE LAW

Existing state law requires that a resident business entity seeking to be a corporation file its articles of incorporation with SOS. Once SOS accepts the articles of incorporation, the business entity is recognized as a domestic corporation from the date of incorporation until the date it files a Certificate of Dissolution with SOS.

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For foreign corporations seeking to transact business in this state, the corporation must file a Certificate of Qualification with SOS. Once SOS accepts the certificate of qualification, the foreign corporation is recognized as qualified to transact business from the date of qualification until the date it files a certificate of withdrawal with SOS.

Existing state law provides that two or more corporations may be merged into one corporation (i.e., the surviving corporation). To accomplish the merger, among other things, the surviving corporation is required to submit a copy of the agreement of merger to the SOS, and the SOS must file the agreement of merger. Once the agreement of merger is filed by the SOS, the parties to the merger are immediately treated as one corporation, and the merger is deemed effective on the date the agreement of merger was originally submitted by the surviving corporation to the SOS. However, before the SOS can file the merger agreement, it must request and receive a Certificate of Satisfaction from FTB.

The Certificate of Satisfaction certifies that FTB is satisfied from the available evidence that all taxes imposed on the disappearing corporation have been paid or are secured by bond, deposit, or otherwise. Currently, FTB requires that the disappearing corporation file all returns due and that any outstanding tax liabilities be paid or secured by bond before the certificate is issued.

State law also provides that upon the merger of two or more domestic corporations (defined as California-incorporated under state corporate law, as distinguished from U.S.-incorporated under federal income tax law), the separate existence of the disappearing corporation(s) ceases. Furthermore, the surviving domestic corporation assumes all of the debts and liabilities of each disappearing corporation in the same manner as if the surviving corporation had incurred those debts and liablities directly. This statutory assumption of debts and liabilities requires the surviving corporation to prepare and file tax and information returns and to pay any state tax liability due from the disappearing corporation(s).

For a surviving foreign corporation the merger becomes effective in accordance with the law of its jurisdiction. The surviving foreign corporation is required to file with SOS a copy of the merger agreement, certificate or other documents filed with the state of its incorporation. In addition, the disappearing corporation is required to obtain from FTB a Certificate of Satisfaction as described above.

If the articles of incorporation of a domestic disappearing corporation were filed less than 60 days from the date of filing the agreement of merger, the SOS can file the merger without the Certificate of Satisfaction from the FTB if two conditions are met. First, the surviving corporation must be a domestic corporation. Second, all returns for the disappearing corporations are filed and any tax liabilities owed by the disappearing corporations are paid.

THIS BILL

This bill would allow the SOS to file an agreement of merger of two or more corporations without receipt of the Certificate of Satisfaction from the FTB if the surviving corporation is a domestic corporation or a foreign (non-California-incorporated) corporation qualified to do business in this state.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not impact the department's programs and operations.

PROGRAM BACKGROUND

Recent legislation has provided the SOS authority to expedite certain services, including the issuance of a Certificate of Merger. However, a Certificate of Merger can be issued only upon the SOS receiving a Certificate of Satisfaction from the Franchise Tax Board (FTB). It typically takes approximately 30 days for FTB to provide a Certificate of Satisfaction.

OTHER STATES' INFORMATION

The laws of Florida, Illinois, Massachusetts, Michigan, and Minnesota were reviewed because their tax laws are similar to California's income tax laws.

For all states described above, the general rule is to require the surviving corporation to assume all liabilities of the disappearing corporation including income tax liabilities before the merger will be recognized by the state's proper authority.

FISCAL IMPACT

This bill would not impact the department's costs.

ECONOMIC IMPACT

This bill would not impact the state's income tax revenues.

ARGUMENTS/POLICY CONCERNS

Since, under California corporation law, a surviving corporation succeeds to all of the disappearing corporation's rights, property, debts, and liabilities, including the obligation to file tax returns and pay any tax liability, the Certificate of Satisfaction is arguably only a procedural formality. The complexity of merger transactions would be reduced and delays in completing those transactions could be eliminated if the SOS can allow specified corporations to merge without the Certificate of Satisfaction.

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